

Swimming Downstream: Battling Defamatory Online Content via Acquiescence

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“Well, you’re certainly the most Googleable candidate we’ve ever had,” the partner interviewing me said and smiled. I winced and looked at the ground. This moment had been a source of stomach-sinking angst for nearly a year, since I first read the words, typed by a stranger: “Why are you such a whore, Caitlin? P.S. I’m going to ruin your career.” And in the months that followed, it seemed that he might.

Perhaps a little background is in order. In the fall of 2005, I had been admitted to Yale Law School during the previous application cycle and was deferring for a year, so I decided to spend some time getting to know my prospective classmates. I, along with many other Yale “0Ls,” started regularly posting messages on www.lawschooldiscussion.org, a message board primarily devoted to the law school admissions process. I posted under a pseudonym, but on another site, www.lawschoolnumbers.com, which tracks success in the admissions process relative to GPA, LSAT score, and “soft factors,” I provided some personal information, such as my undergraduate school name and the fact that I had been Editor-in-Chief of its student newspaper.

That was enough to prompt a poster at www.autoadmit.com, a largely unmoderated discussion board for law and, less frequently, pre-law students, to start a thread in which my resume was dissected and my name and pictures were posted. Someone emailed me a link to the thread, and I went online to respond to, among other things, the allegation that I had lied on my application to Yale. My participation in the thread prompted a proliferation of others and a cascade of increasingly malicious content assailing my personality, my intelligence, and, most often, my looks. I, in turn, pushed back harder, verbally sparring with self-appointed “board leaders.”

My decision to “fight back” within the context of the board was partly practical and partly emotional. Despite my plans to attend one of the best law schools in the country, I had little in the way of legal recourse. I was broke. I couldn’t afford health insurance, let alone a lawyer. And I assumed that most attorneys willing to take on pro bono work had more important issues to tackle than defamation, an assumption confirmed by the nature of clinical work here at Yale. It never occurred to me that an institutional approach might be

appropriate, at least in part because I knew some of my classmates were posters on AutoAdmit. I somewhat subconsciously regarded my future community as a hostile force, part of the nameless mass I confronted daily with a mixture of supplication and resentment. If it was part of the problem, it seemed unlikely that it would also be part of the solution.

The approach I took wasn't purely pragmatic, though. The board, collectively speaking, made no secret of its animus toward women. There were rumors of men who had been targeted on AutoAdmit, but if they existed, they were few and far between. The views of a large number of its posters could be summed up by a quote from their favorite film, *American Psycho*: "A good personality consists of a chick with a little hard body, who will satisfy all sexual demands without being too slutty about things, and who essentially will keep her dumb fucking mouth shut."¹ And if women's inferior status were not enough, women made better subjects for ridicule because they were easy targets: Call a woman fat or slutty, the posters frequently noted with glee, and it would devastate her. I wanted to prove them wrong, or at least assure myself that I was different.

Unfortunately, my confidence only emboldened many posters. By June 2006, one of them had had enough of my "bad attitude," and issued the promise above. He also blanketed the board in Googleable threads, over twenty in two days, with thread names such as "Caitlin Hall fucked her way into Yale," "We need more Caitlin Hall defamation threads," and "Caitlin Hall Nude Photos." One thread, "Who will Caitlin Hall (prestigious bitch) fuck first at Yale Law?", sprang to the top of the list of results for a Google search of my name, and has remained there since. The poster made plain his purpose, as if it was not already clear: "I'm sure having your real name all over this board will never have any negative consequences. Nor will the Google bombs I set up before you start interviewing. I'm sure employers don't actually Google applicants. HAHHAHAHAHAHAHA . . . bitch."

Of course, his threat was far from idle: It's no secret that employers are increasingly using online resources, from search engines to discussion boards to www.myspace.com, to sneak a peek into candidates' lives. And really, it's difficult to blame them. For the most part, the information they seek is no different from what their clients could call up on their own. Companies such as law firms that rely heavily on their reputations have enormous incentives to tightly regulate them. But that fact becomes deeply disturbing when the offending material is not a salacious photo freely posted on one's own www.facebook.com profile, but rather content over which one has substantially less control.

To put it plainly, we can't stop employers from using social networking websites to research their candidates. We can politely beseech and pressure

1. *AMERICAN PSYCHO* (Lions Gate 2000).

them not to do so, as members of the Yale Law School community have suggested in response to the AutoAdmit debacle, but absent a policing mechanism or a window into the minds of employers, it will always be difficult to ascertain the reasons behind opaque hiring decisions.

Moreover, we probably cannot stop such hateful and hurtful speech from surfacing in a forum as vast and lawless as the Internet. In the United States, the owners of sites such as AutoAdmit are afforded almost iron-clad protection against defamation suits by section 230 of the Communications Decency Act of 1996, which stipulates that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”² In fact, the less site administrators know about the content on their own sites, the better their legal defense—which gives them a strong incentive not to moderate that content. It’s nearly as futile to attempt to take individual posters to task, though the problem in that case is primarily technological: It’s very difficult to hunt down increasingly sophisticated users, especially when site administrators decline to track IP addresses, as AutoAdmit’s do. In short, even if there is often a cause of action, there is rarely a defendant.

What we can do, and should do, is nothing. That is to say, we should not attempt to govern defamatory speech on the Internet. Only through its unabated propagation will employers and their clients cease to view it as relevant; having reached some critical mass, it will be reduced to background noise and will no longer have the damning effect of singling out specific candidates. This solution has the attractive feature of shifting the burden from those who seek to have their reputations protected to those who seek to destroy them. In other words, it renders attempts at online defamation self-defeating, and takes advantage of the inevitability of malice in unmoderated online spaces.

For those whose job prospects are affected in the interim, before that critical mass is reached, this solution may seem frustratingly farsighted. But it is, ultimately, the only solution. It is the only way employers and their clients will learn how foolhardy it is to assign meaning to such malignant online content. The steeper we make that learning curve, the better.

2. Communications Decency Act of 1996, 47 U.S.C. § 230 (2000).

